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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FWP/168056

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 17, 2015, under Wis. Admin. Code § HA 3.03(4) to review a decision by the Winnebago County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on September 17, 2015, at Neenah, Wisconsin.

The issue for determination is whether the agency correctly discontinued Petitioner's FoodShare for failing to meet Able-Bodied Adult without Dependent (ABAWD) work requirements.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Jeanie Ortiz

Winnebago County Department of Human Services  
220 Washington Ave.  
PO Box 2187  
Oshkosh, WI 54903-2187

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. Petitioner filed this appeal to contest the discontinuance of her FoodShare benefits effective August 1, 2015. Those benefits were discontinued for failure to participate in the FoodShare Employment and

Training (FSET) program as an Able-bodied Adult Without Dependents (ABAWD) who was required to meet a work requirement.

3. Petitioner was an ongoing FoodShare recipient and his FoodShare subject to review in April 2015.
4. Petitioner was referred to the FSET program as an Able Bodied Adult Without Dependents in early April 2015. There is no evidence that she was exempt.
5. Petitioner was scheduled for 9 FSET orientation appointments before finally attending the 10<sup>th</sup> on July 9, 2015. She was provided with a log used to track FSET activities and those were to be turned in every Friday.
6. Petitioner was sent a Notice of Decision dated July 17, 2015 that informed her that her FoodShare was to be discontinued effective August 1, 2015 because she had used her time limited FoodShare benefits and had not demonstrated compliance with ABAWD requirements. Though there was still 2 weeks left in the month of July at that point, the agency did not expect Petitioner would be able to meet ABAWD requirements before the end of the month.
7. On July 22, 2015 Petitioner turned in an FSET activity log indicating 40 hours of activities.
8. On July 27, 2015 Petitioner verbally reported working 129 hours in July 2015. This was a temporary job at the EAA annual event. Verification of earnings was requested of Petitioner and the employer. The employer did not respond. Petitioner received a paycheck dated August 7, 2015 but did not provide that to the agency until August 21, 2015.
9. Petitioner's time limited FoodShare benefits have been received for the months of May, June and July 2015.

### **DISCUSSION**

Effective July 1, 2014, Wisconsin began the Able-Bodied Adults without Dependents (ABAWD) policy in Kenosha, Racine and Walworth counties. *FoodShare Wisconsin Handbook (FSH) §3.17.1.2*. This was implemented statewide as of April 1, 2015. *Id.*

Under ABAWD rules, childless, able-bodied adults must either meet ABAWD work requirements or be exempt from the work requirement in order to receive FoodShare benefits. *FSH §3.17.1.1*. ABAWDs who are not exempt and who do not meet the work requirement are only allowed to receive 3 full months of time-limited benefits in a 36-month period. *Id.*

A person is considered an ABAWD, if that person is:

- ...
- 18 to 49 years in age\*;
- Able to work;
- Not residing in a household with a child under age 18 (regardless of the individual's relationship to the child, whether the child is included in the individual's FS assistance group, or the child's FS eligibility status); and
- Not pregnant.
- ...

*FSH §3.17.1.4.*

An ABAWD may be exempt from work requirements if the person:

1. Is determined unfit for employment, which includes someone who is:
  - a) Receiving temporary or permanent disability benefits from the government or a private source;
  - b) Mentally or physically unable to work, as determined by the IM agency;

- c) Verified as unable to work by a statement from a health care professional or social worker;
  - 2. Is responsible for the care of a child under age 6 or caring for an incapacitated person, either of which live outside the home;
  - 3. Is receiving Unemployment Compensation (UC), or has applied for UC and is complying with UC work requirements;
  - 4. Is regularly participating in an alcohol or other drug addiction (AODA) treatment or rehabilitation program;
  - 5. Is a student of higher education and is otherwise eligible for FS ([3.15.1](#));
  - 6. Is a full-time high school student age 18 or over;
  - 7. Is receiving Transitional FS benefits; or
  - 8. Is meeting the ABAWD work requirement.
- FSH §3.17.1.5.*

Petitioner has not been determined to be disabled nor does he receive any disability benefits. His medical documentation does indicate that he has some lower back issues but falls short of indicating that he is unable to work. If not exempt from work requirements each FoodShare household member must register for work at the time of application and review. *FSH, §3.16.1.4.* A person may meet the work requirement by participating in the FoodShare Employment and Training (FSET) program. *FSH, §3.17.1.17.*

An ABAWD meets the ABAWD work requirement if one of the following applies:

- 1. Working a minimum of 80 hours per month. Use converted work hours if paid weekly or bi-weekly;
  - 2. Participating and complying with an allowable work program at least 80 hours per month; \* [includes FSET]
  - 3. Both working and participating in an allowable work program for a combined total of at least 80 hours per month; or
  - 4. Participating and complying with the requirements of a workfare program.
- FSH, §3.17.1.7 (asterisk comment omitted).*

I am declining to reverse this discontinuance of Petitioner's FoodShare. She does not meet the exemption requirements. She missed 9 FSET appointments before finally getting enrolled on July 9, 2015. While she did meet the requirements, she did not submit verification until August 21, 2015. Had she turned in the August 7, 2015 paystub promptly there could be a basis for adjusting the time limited benefit clock but, quite frankly, it does not seem that Petitioner was recognizing the urgency of the ABAWD requirements and taking the requirements seriously. Petitioner has not met ABAWD requirements and has used her 3 months of time limited benefits. There is no basis for reversing the agency action or adjusting the time limited benefit clock.

### **CONCLUSIONS OF LAW**

- 1. That the documentation is not sufficient to demonstrate that Petitioner is exempt from ABAWD FoodShare work requirements.
- 2. That the agency correctly discontinued Petitioner's FoodShare benefits for failing to meet ABAWD requirements.

**NOW, THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 15th day of October, 2015

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on October 15, 2015.

Winnebago County Department of Human Services  
Division of Health Care Access and Accountability